

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOMAS ZEA REYES,

Defendant.

Case No. CR06-5005 FDB

ORDER DENYING MOTION FOR  
RETURN OF PROPERTY

This matter comes before the Court on Defendant's motion for return of property. The Court, having reviewed the motion, the response, and record herein, is fully informed and denies the motion.

Defendant Tomas Zea Reyes pled guilty to one count of possession of methamphetamine with intent to distribute and was sentenced to 216 months of imprisonment on February 19, 2009. On February 19, 2010, Defendant filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2255, to vacate, set aside, or correct the sentence. This habeas petition is pending in this Court. On March 1, 2010, Defendant Reyes filed the instant motion pursuant to Fed. R. Crim. P. 41(e) for the return of jewelry and other unspecified personal property seized during the investigation of the subject crime.

ORDER - 1

1 Rule 41(g) of the Federal Rules of Criminal Procedure provides, in pertinent part, that “[a]  
2 person aggrieved ... by the deprivation of property may move for the property's return.... If [the  
3 court] grants the motion, [it] must return the property to the movant, but may impose reasonable  
4 conditions to protect access to the property and its use in later proceedings.” Fed. R. Crim. Proc.  
5 41(g).<sup>1</sup> If a defendant seeks return of property after pleading guilty and being sentenced, there is a  
6 presumption that he is entitled to return of the property. See United States v. Mills, 991 F.2d 609,  
7 612 (9<sup>th</sup> Cir. 1993). Rule 41(g) is an equitable remedy in which the Court must determine all the  
8 equitable considerations in order to make a fair and just decision. Persons moving under Rule 41(g)  
9 must show a possessory interest in the seized property and must also have “clean hands.” A Rule  
10 41(g) motion may be denied “if the defendant is not entitled to lawful possession of the seized  
11 property, the property is contraband or subject to forfeiture or the government's need for the  
12 property as evidence continues.” United States v. Van Cauwenberghe, 934 F.2d 1048, 1060-61 (9<sup>th</sup>  
13 Cir. 1991). To demonstrate a legitimate reason to retain the items, the government may show a  
14 cognizable claim of ownership or right to possession that is adverse to that of defendant. See Mills,  
15 991 F.2d at 612; United States v. Palmer, 565 F.2d 1063, 1065 (9<sup>th</sup> Cir. 1977). The government  
16 may also demonstrate the need to retain the property as evidence, and/or the right to levy upon the  
17 property to pay obligations owed to the government by the defendant. See United States v. Duncan,  
18 918 F.2d 647, 654 (6<sup>th</sup> Cir. 1990).

19 When it is apparent that the person seeking a return of property is not lawfully entitled to  
20 own or possess the property, the district court need not hold an evidentiary hearing. See United  
21 States v. Felici, 208 F.3d 667, 670-71 (8<sup>th</sup> Cir. 2000). No evidentiary hearing is necessary in this  
22 case in order for this Court to conclude that the Rule 41(g) motion should be denied.

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24 <sup>1</sup>The 2002 amendments redesignated the subsection on motions for return of property from  
25 Rule 41(e) to Rule 41(g) without substantive change to the Rule, and courts have applied case law  
26 concerning former Rule 41(e) to the current Rule 41(g).

1 The Court finds it appropriate to deny Reyes' motion for several reasons. First, according to  
2 the Drug Enforcement Agency, all of Reyes' personal items were in the custody of the City  
3 of Lakewood (which conducted the initial investigation), where they were eventually forfeited  
4 pursuant to a state forfeiture proceedings. Thus, the federal government does not have any of  
5 Reyes' personal property to return. The Ninth Circuit has held that a Rule 41(g) motion is properly  
6 denied once a civil forfeiture action has been filed. See United States v. U.S. Currency \$83,310.78,  
7 851 F.2d 1231, 1235 (9<sup>th</sup> Cir. 1988). See also United States v. Fitzen, 80 F.3d 387, 389 (9<sup>th</sup> Cir.  
8 1996) (holding that the state forfeiture proceeding establishing the state's ownership of the property  
9 was sufficient to prove that the defendant was not lawfully entitled to the property).

10 Second, to the extent Reyes is asking for currency or firearms, he agreed to forfeit those  
11 items as part of his plea agreement.


12 Finally, Defendant Reyes has a habeas proceeding pending in this Court. Thus, the jewelry  
13 and other unspecified items of personal property retain their relevant evidentiary value should  
14 Defendant Reyes succeed in having his sentence vacated and obtaining a trial.

15 ACCORDINGLY;

16 IT IS ORDERED:

17 Defendant's Motion for Return of Property [Dkt # 138] is **DENIED**.

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19 DATED this 15<sup>th</sup> day of March, 2010.

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24 FRANKLIN D. BURGESS  
25 UNITED STATES DISTRICT JUDGE  
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